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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 723

KURT G. W. LUDECKE, PETITIONER,

vs.

**W. FRANK WATKINS, AS DISTRICT DIRECTOR OF
IMMIGRATION**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 31, 1947.

CERTIORARI GRANTED APRIL 5, 1948.



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JUDG & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1948.



[fol. a]

**IN UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK**

Civil 38-293

UNITED STATES OF AMERICA, ex rel.

KURT G. W. LUDECKE, Relator-Appellant,
against

W. FRANK WATKINS, as District Director of Immigration
and Naturalization of the United States for the District
of New York, or such person, if any, as may have the said
Kurt G. W. Ludecke, in custody, Respondent-Appellee

[fol. 1] PETITION FOR WRIT OF HABEAS CORPUS

To United States District Court,
Southern District of New York:

The Petition of Kurt G. W. Ludecke shows that Kurt G. W. Ludecke is illegally imprisoned and restrained in his liberty by Mr. W. F. Watkins, Director of Immigration and Naturalization Service District of New York, or such other person, if any, who has him in custody, at this time at Ellis Island in the Harbor of New York; and that he is not committed or detained by virtue of any process or mandate issued by any Court of the United States, or by any Judge thereof; nor is he committed or detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause except to punish him for contempt; nor by virtue of an execution or other process issued upon such a judgment, decree or final order. The cause or pretence of the imprisonment or restraint, according to the best of the knowledge and belief of your Petitioner, is a removal Order of 1-18-46, signed by the Attorney General, because "upon consideration of the evidence presented before the Alien Enemy Hearing Board on 1-16-42, and before the Repatriation Hearing Board on 12-17-45, [the Attorney General deemed] the said alien enemy to be dangerous to the public peace and safety of the United States because he has adhered

to the [Nazi] government . . . or to the principles thereof;"

However, as a matter of fact and of record, your Petitioner is not only Not dangerous to the public peace and safety of the United States, because he did not adhere to the said government or to the principles thereof, but quite on the contrary is an honest legally admitted resident who already long before Pearl Harbor was a true American at heart and in spirit. In Court together with his body he will produce conclusive evidence showing that (1) the Department of Justice did not produce any evidence whatever in said hearings showing that he has adhered to the Nazi Government or to the principles thereof; (2) the charges raised in said hearings are incompetent, irrelevant and immaterial; (3) the entire procedure adopted by the Department of Justice in this matter is un-American and dishonest, arbitrary and illegal, jeopardizing the prestige of American justice by flagrant and cynical violations of both the Constitution and Natural Law itself, as well as the Alien Enemy Act of 1798, authorizing the constraint of alien enemies; (4) it is guilty of fraud and criminal abuse of power in order to bring about under the cloak of legality the illegal deportation of a legally admitted decent resident alien eligible for citizenship; wherefore your Petitioner prays that a writ of habeas corpus issued direct to Mr. W. F. Watkins, Director of Immigration and Naturalization Service District of New York, or such other person, if any, who may have Kurt G. W. Ludecke in custody, commanding him to produce the said Kurt G. W. Ludecke before a term of this Court, so that the Court may inquire into the validity of his detention and removal.

Kurt G. W. Ludecke, Petitioner,

Dated the 14 day of October, 1946.

STATE OF NEW YORK,
County of New York:

Kurt G. W. Ludecke, the Petitioner above named, being duly sworn, doth depose and say, that the facts set forth in the above petition, subscribed by him are true.

Sworn to before me this 14 day of October, 1946.

Alice C. Palmer, Notary Public, New York County
Clerk's No. 271, Register No. 547. Commission
expires March 30, 1947. P. 7.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS

I, R. A. Vielhaber, Assistant to the District Counsel of the New York District of Immigration and Naturalization Service, Department of Justice, in my official capacity and pursuant to authorization, in behalf of the respondent hereby certify and make the following return to the writ of habeas corpus in the above-entitled matter:

1. The relator, Kurt G. W. Ludecke, is being held in custody as an alien enemy pursuant to the provisions of Title 50, United States Code, Section 21, and the Proclamation of the President, No. 2526, dated December 8, 1941.

2. The relator is a native, citizen, denizen, or subject of Germany.

3. The relator was born in Berlin, Germany, on February 5, 1890.

4. The relator has been ordered removed from the United States by an order of the Attorney General dated January 18, 1946, pursuant to proclamation of the President, No. 2655, dated July 14, 1945.

5. A copy of the order of removal is annexed hereto and made a part hereof:

Wherefore it is prayed that the Writ of Habeas Corpus herein be dismissed and the relator remanded to the custody of the District Director, Immigration and Naturalization Service, Department of Justice.

Dated: New York, N. Y., October 28, 1946.

R. A. Vielhaber.

[fol. 3] In the Matter of KURT GEORGE WILHELM LUDECKE,
Alien Enemy.

ORDER OF REMOVAL

Whereas, Kurt George Wilhelm Ludecke is a German alien enemy over the age of fourteen years who has heretofore been interned by order of the Attorney General dated February 9, 1942; and

Whereas, the said alien enemy was, at his request, accorded a full hearing before a Repatriation Hearing Board on the issue of his removal from the United States; and

Whereas, upon consideration of the evidence presented before the Alien Enemy Hearing Board on January 16, 1942, and before the Repatriation Hearing Board on December 17, 1945, I deem the said alien enemy to be dangerous to the public peace and safety of the United States because he has adhered to a government with which the United States is at war or to the principle thereof; Now, Therefore,

It is Ordered that the said alien enemy depart from the United States within thirty days after notification of this order; and

It is Further Ordered that, in the event the said alien enemy fails or neglects to depart from the United States within the said thirty days, the Commissioner of Immigration and Naturalization is directed to provide for the alien's removal to Germany.

Tom C. Clark, Attorney General.

Dated: Washington, D. C., Jan. 18, 1946.

[fol. 4] IN UNITED STATES DISTRICT COURT

SUMMARY OF RELATOR'S BRIEF

If it pleases the Court I make a brief statement—a summary of the facts, my view and attitude. Please listen with an open mind.

At the beginning of Hitler's regime, early in 1933, without any process of law I was imprisoned to rot in Nazi concentration camps, simply because I had insisted on principles, decency and law. I escaped to save my life and returned to America where I was a legally admitted resident. Though the Nazi Ludecke was dead, I had to get the past off my chest. After writing "I Knew Hitler"—published by Scribners in 1937—I was ready for a new life and gradually developed a wider understanding and a deeper insight into the significance of things. But that did not save me from being arrested the day after Pearl Harbor and from being interned as a "potentially dangerous alien enemy". Ever since, for almost five years, I have been a

prisoner in American concentration camps and now am facing deportation which, under the circumstances, means more persecution, slave labor, maybe even death in Germany.

All this, nota bene, for no valid reason whatever, without a proper hearing in Court as demanded by the very law allegedly authorizing arbitrary procedure, namely by Section 23 of the Alien Enemy Act of 1798; moreover in flagrant violation of my constitutional rights and my natural rights given to all men, be they citizens, aliens, or alien enemies, by a source of law more fundamental than any party or majority or any human institution, as the Declaration of Independence proclaimed. For the right to liberty is secured by the writ of habeas corpus, but was not given by the Habeas Corpus Act. Thus spoke a competent American, Associate Justice Dore of the Appellate Division of the New York Supreme Court, in a remarkable speech made last March to the Association of the Bar of the City of N. Y., part of which appeared as "Human-Rights and the Law" in LIFE's last Independence Day Editorial reminding us that America is founded on Natural Law proclaimed in the Declaration. In "Human Rights and the Law" Justice Dore, as LIFE well says, "has gone straight to the heart of an old philosophical dispute: whether Law is simply what selfish and willful men choose to make it or whether Law can and must be derived from eternal principles of right and wrong."

Decisive is that *Natural Law, The Supreme Law*, has given these rights to all men, black or white, yellow or red, Gentiles or Jews, including alien enemies of course, may they be native Germans today, or communists or democrats from other lands tomorrow.

The Dept. of Justice is definitely in error in insisting on the fallacy that the Government exercising Plenary War Powers is within the law to deny these rights to alien enemies—by fiat branded and persecuted as "dangerous"—without due process of law. No doubt that constitutional and natural rights are valid in war and peace. This self-evident truth is also confirmed by the power of precedent. There is the famous habeas corpus case known as *Ex Parte Milligan*. The Opinion handed down by the Supreme Court in 1866 reads as follows:

"The Constitution of the United States is a law for rulers and people, *equally in war and peace*, and covers

with the shield of its protection *all classes of men, at [fol. 5] all times, and under all circumstances.* No doctrine involving more pernicious consequences was ever invented by the wit of man that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity, within the Constitution, has all the powers granted to it which are necessary to preserve its existence; . . ."

Furthermore, the war is over already 18 months, the Nazi State so completely and totally crushed, that today there is no German nation, no German Government, no German flag. Therefore, the argument that the United States is still at war with a non-existing Germany is mere false pretense for the exercise of arbitrary power in contravention of vested natural and constitutional rights; hence, the continuance of the exercise of such tyrannical powers is un-American and dishonest, illegal and a great threat to the American Way of Life compared to which any alleged danger from this Relator is infinitesimal.

I wish to emphasize too that it is definitely not true what is alleged in the removal Order signed by the Attorney General, namely, that I am deemed "dangerous" on the *basis of evidence* considered at the farcical hearings granted alien enemies to serve as window-dressing for the public. The truth is that no evidence whatever was produced. And it is a matter of record that never there were any specific charges and that the points raised at said hearings were absurd, incompetent, irrelevant, and immaterial.

As long as Courts are open and unhampered with within the confines of the U. S. where Relator resides, I am entitled to a proper hearing before a judicial tribunal—as provided under Section 23 of the A. E. Act—to determine the question of whether or not I am a dangerous alien enemy. By its very language, said Section 23 confers upon the Courts having criminal jurisdiction the sole authority to cause the alien enemy to be conveyed before a Court, to be given *full examination* and hearing on a complaint, and after *sufficient cause* appearing to be removed. And said Section does not merely say that it confers jurisdiction in these matters upon the Courts, but uses the words "it shall be their duty". By any rule of construction or reasonable interpretation of this language, it must be evident that

under Section 21 of said Act the President was given the right to make certain proclamations in time of war, but not the right to make law authorizing him to detain and deport alien enemies, that is legally admitted residents, without due process of law. After such proclamation is made, the enforcement thereof is given exclusively to the several courts of the United States where it rightfully belongs.

In his report on the Nuremburg trial Justice Jackson rightly emphasizes that more important than the personal fate of the Nazi leaders are the principles, that these principles, now backed by the power of precedent, constitute the basic charter of international law, and that this law applies not only to the Nazi leaders but to all men everywhere; and that it is incumbent upon all victors to review their own politics and practices in the light of the new law. And the recent official note of the State Department to the Yugoslav Foreign Office regarding imprisoned Americans says:

"It appears that these individuals, who have been convicted of no crime whatever, have been confined in camps under the administration of the Yugoslav Government;" etc., etc., and continues, "The United States Government states its abhorrence and condemnation of the practices described above. They are violations of established principles of international [fol. 6] law governing the protection of foreign subjects, constituting involuntary or forced labor in denial of the *natural rights of human beings* and possessing no features distinguishable from slave labor."

In the light of the violations of these very rights of alien residents in the United States by the very same Government, I ask How is it possible that a Government loudly condemning such violations *abroad* and supporting the principles of right and justice in certain parts of the world, at the same time insists to *deny them at home*?

Once more I point to the Declaration of Independence which Lincoln said is "an abstract truth—*applicable to all men and all times*." And to the words spoken by the great American prophet, Edward Bellamy, the author of "Looking Backward" and "Equality": "The lawyers had made a Constitution of the United States, but the true American Constitution—the one written on the people's hearts—had

always remained the immortal Declaration with its assertion of the unalienable equality of all men."

We are at the parting of the ways. The time has come for the American Courts as well as for the American people to decide once and for all whether or not the Declaration is valid and all that implies, whether or not it is a living reality or merely an occasion for fire-cracker celebrations of "glittering generalities" as cynics say.

In conclusion, I solemnly declare that I am an honest man of good will believing in the Right Life and striving to live up to it, and that I fight this fight not for the sake of my unimportant self, but for fundamental principles at stake. Therefore, for the benefit of all concerned, I have prepared a Brief dealing with all the facts and issues involved, so that the Court may have all the information needed to reach a just decision.

With your permission, Your Honor, I herewith respectfully submit the Brief which I believe deserves and compels the most active consideration of this Court, for the sake of Justice and the Honor of the United States.

Thank you!

Above was submitted with the Brief to the Court (United States District Court, Southern District of New York); on October 29, 1946.

[fol.]

FOR PERSONAL ATTENTION

REPORT

made for the Attorney General Tom C. Clark to supplement attached Statement of December 17, 1945, by Kurt G. W. Ludecke, Ellis Island ORF, New York 4, N. Y., January 16, 1946

On December 17, 1945, I had my hearing at Ellis Island before the Repatriation Hearing Board consisting of Mr. Edward J. Ennis, Mr. John Burling, and Mr. W. F. Kelly. Attached Statement of which I left a copy with the Board for the record speaks for itself, however would be incomplete without supplementing it with the report of the failure of the Board to produce the evidence, namely, "sufficient cause" that would justify my removal out of the territory of the United States. For the very law which is

supposed to be the "legal" basis for my removal, the Alien Enemy Act of 1798 (50 U. S. C. 21-24), explicitly states in § 23 that "the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized . . . to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing . . . and sufficient cause appearing, to order such alien to be removed out of the territory of the United States . . . or to be otherwise restrained . . . and to imprison, or otherwise secure such alien; until the order which may be so made shall be performed."

In the light of this Act it is evident that my removal would be a definite violation of American law, just as my internment during and after the war is unlawful and therefore is an abuse of power, because there never existed any evidence, that is "sufficient cause," to justify even my detention for later removal—a fact which could have been easily established, if a "full examination" of my case had been made—"full" here apparently meaning an honest and thorough examination. However, such a "full" examination has not been made.

Needless to emphasize that neither the Alien Enemy Hearing Board considering the question of my internment on January 16, 1942, nor above mentioned Repatriation Hearing Board considering the question of my removal, represent a "court, judge, or justice" as is required by law. In this connection, special attention must be drawn also to the fact that my very arrest was illegal, because it took place on December 8, 1941, that is 3 days before Hitler's Declaration of War against the United States—a colossal blunder which no American, not even the late President Roosevelt, could have foreseen—"illegal" in the light of the Alien Enemy Act itself which explicitly states in § 21 that only in case of war, i.e. "declared war," alien enemies "shall be liable to be apprehended, restrained, secured, and removed as alien enemies."

At the beginning of my hearing on December 17, 1945, I made the following declaration: "Before making a statement on my behalf may I emphasize that after an internment of more than four years I still have been unable to learn Why—that is the specific charge on which, first, I was supposed to be a "potentially" dangerous alien

enemy subject to internment, and now am suddenly deemed to be "actually" dangerous subject to removal because of my alleged adherence to an already liquidated government branded as a government of "murderers and gangsters" or to its principles branded as "satanic principles"—again without telling me any specific reason that would justify such a serious indictment and decision."

"Therefore, I herewith respectfully request that you tell me now on which ground the charge is based, and on which specific evidence the verdict has been made."

[fol. 8] Here is what in the opinion of Mr. Ennis (or whatever other responsible person) presents the "evidence" that justified my internment and now calls for my removal as a "dangerous" alien enemy—a man with a clean record who has been legally admitted in this country in 1927, who has scrupulously obeyed the law of the land, who has leaned backward to explain himself without reservation to American officials whenever possible.

1) My asking the German consul Wiedemann about my legal status.

2) Passages from a copy of a letter of December 2, 1941, written by me to Claude Bragdon, Shelton Hotel, New York City, and apparently containing controversial remarks about Roosevelt and Hitler.

3) The answer I had given at my hearing before the Alien Enemy Hearing Board at Chicago on January 16, 1942, when asked which side I wished to win the war. (I said I quote Gandhi who replied "neither side" to the same question put to him some days ago.)

4) The denial of my petition for naturalization on December 18, 1939.

5) The question of my still being a Nazi in spite of my open break with Hitler and the Nazi party after my escape from a Nazi concentration camp early in 1934, in spite of my condemnation and devastating account of Hitler and his regime in my book "I Knew Hitler" published by Charles Scribner's Sons in 1937, and in spite of my repeated declaration and easily verified fact that already since 1939 I have adopted the philosophy and morality of Edward Bellamy, whose synthesis and program offer a workable application of Jesus Christ and of the abstract truth pro-

claimed in the Declaration of Independence in practical terms.

Before I proceed to deal with the above "charges" and points of "evidence" one by one I wish to emphasize that I object to each as incompetent, irrelevant, and immaterial, and that in the light of the very indictment itself, namely, the official Notice of my removal of July 31, 1945, in which the Department of Justice definitely committed itself by explicitly stating:

"1. By proclamation of July 14, 1945, the President of the United States, acting under the authority of the Alien Enemy Act of 1798 (50 U. S. C. 21-24) has prescribed

"All alien enemies who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States"

"2. Pursuant to the above proclamation and based upon the evidence considered at [my] earlier alien enemy hearing , it has been determined that [I] should be removed"

Already at this point it is evident, that it is absurd to consider me "dangerous" on the ground of above specified charges, especially in view of the fact that the Hitler regime and the Nazi party as the physical organization to promote and apply Nazi principles whatever those may be are crushed beyond the hope of recovery, not to speak of the equally obvious fact that the Nazi Government or Nazi principles here in this country never at any time have been an *actual* danger to the peace and safety of the United States, and certainly now that the war is over, Hitler and the Nazi machine smashed beyond repair, cannot possibly —be deemed to be even a *potential* danger from any point of view.

[fol. 9] Moreover, the War Division of the Department of Justice is stating a falsehood in speaking of "the evidence considered at my earlier hearing" (a fact already

emphasized in enclosed statement) because I have heard of the charges above mentioned only now for the first time on Dec. 17, 1945.

Also, in view of these facts the wording of § 3 of the official Notice is most significant, namely, it says that a hearing will give me "an opportunity to appear in person and to present evidence to show that [I am] not dangerous to the public peace and safety of the United States because of [my] adherence to an enemy government or to the principles thereof"—just as though my adherence to a government branded a government of murderers or to its satanic principles were an already established fact.

Now, to return to the specific charges presented as "evidence."

1) Considering the rumor of my denaturalization after the banning of "I Knew Hitler" in Germany in 1938, and considering the denial of my petition for naturalization in the United States in 1939, my inquiry for my legal status is a natural and logical step to take, because in case of the loss of my German citizenship, I would have been staatenlos—stateless, certainly an uneviable position, especially in these times.

2) Said letter to Claude Bragdon, written *before* Pearl Harbor by the way, is a private letter addressed to a distinguished and renowned American, therefore decidedly a matter that is nobody's business but our own, particularly in view of the "Four Freedoms" and all that implies. (Not wishing to discuss controversial remarks taken out of the context I asked for the whole letter to refresh my memory as to its real meaning. However, significantly my reasonable request was denied.)

3) I quoted Gandhi's reply, first, I thought it a wise answer for reasons too long to explain now, and second, certainly Gandhi could not be accused or even suspected of being a Nazi or Nazi sympathizer. Anyway, a strange point of "evidence"—particularly in view of the "Four Freedoms" and all that implies.

4) It is a matter of record with the U. S. A. District Court of Michigan Southern Division at Detroit that the reason for denial of my petition on December 18, 1939, was *not* because of an alleged dangerousness because of my alleged

adherence to a gangster government or to its satanic principles, but because of "failure to prove attachment to the principles of the Constitution of the United States. With prejudice. Not to refile before five years from date." In other words, according to the verdict of a Federal Judge in a public court procedure I should have been able to refile my petition on December 18, 1944, and most probably would be an American citizen now. However, my application to refile a petition for naturalization properly submitted to the Nationality and Status Section of the I. & N. Service at New Orleans, La., was not taken into practical consideration because of my status of an interned alien enemy. Apart from the fact that the denial of my first petition at Detroit was "a flagrant miscarriage of justice" to quote a reporter of the Detroit Times—a fact I could easily prove if allowed to do so as already repeatedly stated in communications to Mr. Ennis and other American officials—said denial under no circumstances can serve as a point of evidence to justify my proposed removal as an alien enemy "dangerous to the peace and safety of the United States."

5) Am I still a Nazi?—At this point, I wish to state that I am well aware of the false pretense of the whole business, [fol. 10] for the gentlemen interested in my removal are not so stupid to believe themselves that I am "dangerous" in the sense presented for the record and the public. If nevertheless I choose to fight this miserable humbug, I am doing it also for the record and for a definite purpose which will become clearer as the days go by.

If Mr. Ennis or the person responsible for my internment and proposed removal would have made a "full examination" of my case as required by law, he could have convinced himself as early as 1942 that the Nazi Ludecke died many years ago, and that the new Ludecke is a true American in heart and in spirit ever since 1939, when I adopted Edward Bellamy's concept of Americanism, as well as his practical interpretation and application of the Declaration of Independence which is the foundation of what is called today American Democracy. However there does not exist an official definition nor a traditional and generally accepted interpretation of the real meaning of both: The Declaration of Independence and American Democracy. This deplorable situation partly explains the conflicting views and

the confusion in the minds of the people regarding these concepts, which in turn make for confusion and conflict in practical life.

Not a particle of evidence was produced at my hearing showing that I am still a Nazi, especially a Nazi of the kind to make me "dangerous" and therefore subject to removal—for the simple reason that there is no evidence that I am still a Nazi or ever was a Nazi "dangerous" in the sense of the indictment.

For your information, I may quote a passage from a Statement of September 13, 1944, made at the instance of Mr. Raymond E. Bunker, officer in charge of the A. D. Station at Algiers, La., and forwarded to Mr. Ennis, which reads as follows:

"... it is a matter of record that I have never been a "Nazi" in the sense the Nazi is publicly interpreted, represented, understood and indicted in America ever since Hitler's rise to power in 1933, but especially since Pearl Harbor when war propaganda and lying from all sides intensified hate and confusion throughout the world, so that the "Nazi", for instance, in the minds of most Americans is identical with the lowest beast and the very devil himself.

"It also is a matter of record that ever since I became a member of the Nazi party I specialized in foreign politics, therefore had nothing to do with the internal development and domestic policies of the Nazi party. Nor did I have any influence whatever on the moulding of Nazi thought and the shaping of the Nazi system, for the simple reason that except for short visits I was again continuously outside of Germany ever since the spring of 1923 until March 10, 1933, shortly after Hitler became Chancellor on January 30, 1933. And of the three-hundred and fifty-five days I spent in Germany in 1933-34, I rotted two hundred and forty-five days in prisons and in concentration camps, because I consciously and fearlessly opposed certain developments and personalities that jeopardized the very future of the German revolution. . . . Thus, it must be emphasized that I have neither part nor lot in nor in the slightest responsibility for whatever happened in Germany, nor whatever Hitler, the Hitler regime, and the party may be guilty of since the beginning of their rule, for the simple

reason that I have been a prisoner in Germany shortly after my arrival in Germany in 1933, and that I have not been in Germany or Europe ever since my escape from a Nazi concentration camp on March 1, 1934.

[fol. 11] "In this connection, I may quote a significant passage from 'Failure of a Mission' by Sir Nevile Henderson, the last British ambassador in Berlin, who declared that 'it would be *utterly unjust* not to realize that great numbers of those who *adhered* to and worked for Hitler and the Nazi regime were *honest* idealists, whose sole aim was to serve Germany, to improve the lot of her people, and to add to their happiness. Hitler himself may well have been such an idealist at the start. Later he undoubtedly used this idealism as a cloak to justify the continued existence of the regime and of its leaders.' (From the World's Greatest Books, p. 861, Wm. Wise & Co., New York, 1942.)"

"It is interesting that an Englishman and distinguished statesman who certainly can not be accused of any pro-Nazi tendencies nor any subversive activities made such a statement as late as 1940, when Great Britain and Germany were at war already for many months. In contrast, I may emphasize that as a matter of fact I personally worked for Hitler and the Nazi party only up to May of 1933, and ever since uncompromisingly opposed the 'legitimate' Nazi regime."

A regime, I am adding today, which was properly recognized by the American Government from 1933 to 1939.

It would appear logical and sensible, in fact the obvious thing to do, to read at least the autobiography of a man dealing with the very matter of which he is accused before indicting and condemning him. The hearing revealed, however, that neither Mr. Ennis nor Mr. Burling—contrary to the "full examination" exacted by law—have thought it necessary to read "I Knew Hitler"—which is not only a most revealing human document, but also a most important piece of evidence, in my favor, to be sure, because from beginning to end it is full of biting criticism, exposure, and condemnation of Hitler and his chiefs, of Nazi ways and proceedings, often in a language so strong that in the English edition by Jarrolds, London, such passages are modified or omitted entirely because of the severe libel laws in England. Otherwise these gentlemen would have learned of a letter I wrote to Hitler after my escape from Germany

and arrival at Geneva in April of 1934. (see pp. 752 and 753.) The essential parts of said letter are reproduced in paraphrased form in the book. I quote here only the following:

"Regrettably I could no longer call him my 'Führer', for I could no longer profess adherence to a party which was willing to treat an innocent and faithful member so shamefully, depriving him of his liberty for eight months without legal procedure and without a hearing, brutally and ruthlessly abandoning him to spiritual and physical destruction."

"... that I was ready to accept the personal injustice for the good of my soul, and to let it go at that. But there was a principle at stake whose importance transcended my unimportant self. . . . Hitler himself, I reminded him, had told a leader's conference in October 1933: 'He who courageously demands his right, in the end will get his right.' And in another speech he had said that he would retreat 'only before reason.' In this case reason was on my side. He knew well that the calm admission of error was not a sign of weakness but of strength—a proof of human greatness. And if this last attempt to obtain my right should also be ignored, I would have to act at my discretion, with only my conscience as my guide."

I even said in the letter but did not mention it in the book that in that case "I could not consider myself a German [fol. 12] any longer." (A copy of said letter still is in my possession, as well as the receipts issued by the Geneva post office which sent copies of the letter by registered mail to the people named in the book on page 753.)

There is a curious analogy between the situation of today and the one referred to above. For the sake of justice and the honor of the United States, I sincerely hope that American justice will be more honest than Nazi justice.

One member of the board sought to belittle the significance of the blurb of my book when I pointed to the following passage:

"A unique human document of historic value . . . the story of the progressive disillusionment of a man who once revered Adolf Hitler as his hero, but sees him now as an ice-cold, unscrupulous opportunist whose egomania has distorted him into a Messianic fraud."

Despite the author's justification for bias, his account strives for honesty and detachment, and succeeds admirably in painting a living, breathing portrait."

Probably, the gentleman did not realize that behind the blurb of a book stands the reputation and the prestige of the publisher, in this case of that fine old publishing house bearing the name Charles Scribner's Sons, one of the very best and most reliable in the United States if not the world, which attained the century mark the other day.

Of the many appraisals and reviews recommending my book I select one, because it emphasizes something that I value most, the opening paragraph of a letter of December 20, 1937, by Vernon McKenzie, dean of the School of Journalism of the University at Seattle, which reads as follows:

"I got hold of your book 'I Knew Hitler' as soon as I could after it came out, as I knew I would find it of intense interest. My expectation was fully borne out and I found it one of the most thrilling, dramatic, and humanly *honest* books that I have ever read."

Finally, for the record, I draw attention to enclosed brief read by me in court and left as evidence on December 18, 1939. Though it did not move the Judge to make an honest decision regarding my petition for naturalization, it nevertheless is perhaps the most revealing document about my own self. It explains the inner change from the Nazi Ludecke who is dead to the new Ludecke who according to the enclosed affidavits of three trustworthy and distinguished Americans with mature judgment "is in every respect worthy of American citizenship and in no way dangerous to the public peace and safety of the United States."

As evidence that I did not suddenly discover Edward Bellamy *after* my arrest for reasons of expediency, but had adopted his philosophy long *before* my arrest, I quote from a significant bold-faced article "Ex-Nazi Loses Plea for U. S. Citizenship" in the Detroit Evening Times of December 19, 1939, page 7, saying:

"Judge Tuttle questioned Ludecke on recent speeches, asking:

'You are preaching in America that the Treaty of Versailles is unjust?'

'Many Americans say so,' Ludecke replied.

Praising the economic philosophy of the American writer Edward Bellamy, Ludecke referred to economic ills, saying:

'No one can tell me God ordained so much misery.'

Judge Tuttle interrupted:

'Do you have the idea there are people hungry in this country?

[fol. 13] Or that people are shivering in the streets? We have been freest of any nation of such evils for hundred years.'

Quoting President

'I quote the President,' Ludecke said 'who referred to the ill-fed, the ill-housed and the ill-clothed.

'if you call me a revolutionary because I believe Edward Bellamy was right, you condemn not me but Edward Bellamy, a native American and a noted philosopher.'"

I insist on mentioning Bellamy because my conversion to true American democracy and my understanding of the American Purpose was not caused by what I saw and experienced in the sham democracy of today, but by studying and appreciating the spiritual vision, the moral integrity, and the practical wisdom of Edward Bellamy whose incomparable work is the most penetrating and honest analysis of human society as it is, and the most comprehensive and logical, the most constructive and creative synthesis of human society as it should be—and will be some day, because it is the only way to build the Brotherhood of Man and the Fatherhood of God.

Therefore, because it is high time that especially the public servants learn what *true Americanism* really is, it is an absolute Must to "Read Bellamy! Once thoughtfully read and pondered, he is capable of giving the reader new eyes to see with, new ears to hear with, and a new mind and heart to understand and interpret this world in which we live."

In fact, the decisive question of What democracy really means is so acute that men even in the Department of Justice are cognizant of it, but obviously men not belonging to the Alien Enemy Control Unit. The "Federal Textbook On

Citizenship" published by the United States Department of Justice and the Immigration and Naturalization Service in 1943 admits in "Introduction to Citizenship Education"—A Teacher's Guide—that:

"... within our own land there is confusion as to what democracy really means, and more than one element which some Americans feel to be a vital part of true democracy is being decried by other groups of Americans.

"Thus it is not surprising if the noncitizen, perhaps of limited education and brought up in a different sort of environment, falters in developing an undying allegiance to democracy. He is torn by rival propagandas. He sees us idealizing his native land one year and turning upon her the next—or reviling his native land for years, then suddenly cheering her as an ally.

"Yesterday's friends are today's enemies, and it seems there is nothing stable, nothing man can tie to permanently. All this affects the noncitizen personally. He is bewildered by the rapidly changing attitudes his neighbors maintain toward him because of events far away. He finds no real solidarity of opinion as to what is democracy and what is not. Probably at no time in his life has anyone presented to him clearly and simply a full picture of the true concepts of democracy, or of the issues which face democratic people." (p. 33)

"... At no previous time have Americans searched so earnestly for the true meaning of the 'American Way.'" (p. 35)

"... Perhaps here is a problem for Americans to face, too: Would we fully admire a person who turned on the land of his birth and kept no lingering affection for it, who did not view with sorrow the hostilities between his old and new home? Would such a man be very likely to develop a great and lasting love for America?" (p. 32)

[fol. 14] In view of this admission by the Department of Justice itself, the Attorney General would do well to keep this in mind when considering the "recommendations of removal" coming from Mr. Ennis concerning men and women who are about as "dangerous" to dear old Uncle Sam as a gnat is to an eagle.

Summing up, the following may serve as a final illustration of the procedure and an indication of the level of my hearing, which I did my best to tolerate with courtesy and patience though it was hard at times not to be sarcastic.

Toward the end, Mr. Ennis—perhaps aware of the sorry show of “evidence”—suddenly with an eager glint in his eyes hurled at me the question “What was your reaction to President Roosevelt’s death?”

Needless to emphasize the significance of this performance of Mr. Ennis who—unable to produce the “evidence” of my dangerousness as requested by me and supposed to be a long established fact according to the official Notice of my removal—tries to establish now at the hearing the much needed evidence, and that with a question which so obviously is incompetent, irrelevant and immaterial, that a child could grasp it. Moreover, it allows a deep insight into the curious working of Mr. Ennis mind. If the “Führer-complex” of the Nazis is the wrong thing, if it is wrong to identify Hitler with the German people, is then the “Roosevelt-complex” of the democrats the right thing, and is it right to identify Roosevelt with the American people—in the sense, for instance, that somebody expressing delight with Roosevelt’s death more than ten months ago becomes “dangerous to the peace and safety of the United States?”

(To anticipate any misinterpretation or misunderstanding I may mention that I did not oblige Mr. Ennis by saying that I was pleased with President Roosevelt’s death, but said something else to suggest the pointlessness of his question.)

Enough is said to show that it would be a preposterous lie and criminal abuse of power to brand me with the stigma of deportation as a man “dangerous to the peace and safety of the United States.” If anything I might be considered dangerous to the peace and safety of hypocrites and liars. However, even that is false, for no longer am I a revolutionary activist because among other things I learned that first I must reform myself before I dare reform my fellow men, though I am ready any time to give from the little I know to those who still know less than I.

Far be it from me, however, to thrust my goodwill upon anybody and insist to stay on a community whose public servants of ill will seek to remove me by pitiful procedures and illegal means. Therefore, I propose that I leave voluntarily as a free man, not as a dangerous alien deportee,

at the earliest opportunity provided I shall be allowed sixty days to settle my affairs before sailing date.

Fundamentally, it matters not Where I live, for I can strive to live the right life and be of service where ever I am. Besides, it may well be a better thing to do the best I can while I can in the midst of a defeated people suffering in body and soul, than to be a futile and frustrated something in the midst of a triumphant people breathing the foul air of self-complacency, hypocrisy, and self-deceit.

[fol. 15] In conclusion, may I take the liberty to call your attention to the enclosed editorial "Concentration Camps in America" published in the Chicago Daily Tribune of December 29, 1945, which speaks for itself. There may follow more editorials and articles of the sort and not only in the Chicago Daily Tribune which will expose also the infamous treatment of legally admitted not only not "dangerous" but law-abiding decent people, so-called alien enemies, many of whom (including men of over sixty-five years of age) have to live under outrageous conditions in the pigsty of Ellis Island which is worse than a madhouse, and that after four years of internment practically for no other reason than that they are of German blood or for some asinine charge which would be laughed out of court anywhere in the United States, except New York perhaps.

Do you know that there are many who have had their hearing already in August of last year and still are in the dark about their removal or release? Do you realize the mental torturt of incertainty they are undergoing already for years? Do you realize that an alien internee is worse off than a regular crimknal who is properly tried in open court, properly sentenced by a recognized judge, at once or within a few days, if found guilty by a regular jury, transferred to a definite prison, to a definite cell and a definite job, for a definite time? Whereas we are moved from place to place, often housed like cattle—under conditions that destroy our health, undermine our morale, and drive us crazy!! And never know what next?! And that in spite of the obvious fact that most of us are innocent and harmless?

Instead of tormenting and removing the innocent the Attorney General would do better to remove and call to account the guilty who prostitute the sacred cause of justice, disgrace the honor of the American people, and jeopardize the prestige of a misinformed President of a great nation. No less a person than State's Attorney Homer S. Cummings,

later Attorney General in the Roosevelt Cabinet, once solemnly declared that "it goes without saying that it is just as important for a State's Attorney to use the great powers of his office to protect the innocent as it is to convict the guilty."

Ellis Island Alien Detention Station, January 16, 1946. Kurt G. W. Ludecke.

[fol. 16] IN UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

Civil 38-293

UNITED STATES OF AMERICA, ex rel., KURT G. W. LUDECKE,
Relator

against

W. FRANK WATKINS, as District Director of Immigration and Naturalization of the United States for the District of New York, or such person if any, as may have the said KURT G. W. LUDECKE in custody, Respondent

Kurt G. W. Ludecke, Petitioner pro se.

Hon. John F. W. McGohey, United States Attorney for the Southern District of New York, Attorney for respondent, Foley Square, New York 7, N. Y.

OPINION—November 6, 1946

LEIBELL, D. J.

The relator in this habeas corpus proceeding is Kurt G. W. Ludecke, an alien enemy, born in Germany, who was interned here during the war and against whom the Attorney General issued an order of removal from the United States, dated January 18, 1946. A writ of habeas corpus was issued October 18, 1946, on a petition of the relator dated the 14th, from which I quote the following:

"However, as a matter of fact and of record, your Petitioner is not only Not dangerous to the public peace and safety of the United States, because he did not adhere to the said government or to the principles

thereof, but quite on the contrary is an honest legally admitted resident who already long before Pearl Harbor was a true American at heart and in spirit. In Court together with his body he will produce conclusive evidence showing that (1) the Department of Justice did not produce any evidence whatever in said hearings showing that he has adhered to the Nazi Government or to the principles thereof; (2) the charges raised in said hearings are incompetent, irrelevant and immaterial; (3) the entire procedure adopted by the Department of Justice in this matter is un-American and dishonest, arbitrary and illegal, jeopardizing the prestige of American justice by flagrant and cynical violations of both the Constitution and Natural Law itself; as well as the Alien Enemy Act of 1798, author- [fol. 17] izing the constraint of alien enemies; (4) it is guilty of fraud and criminal abuse of power in order to bring about under the cloak of legality the illegal deportation of a legally admitted decent resident alien eligible for citizenship;"

A copy of the removal order is annexed as a part of the "Return to Writ of Habeas Corpus" filed herein October 28, 1946, and reads as follows:

"WHEREAS, Kurt George Wilhelm Ludecke is a German alien enemy over the age of fourteen years who has heretofore been interned by order of the Attorney General dated February 9, 1942; and

WHEREAS, the said alien enemy was, at his request, accorded a full hearing before a Repatriation Hearing Board on the issue of his removal from the United States; and

WHEREAS, upon consideration of the evidence presented before the Alien Enemy Hearing Board on January 16, 1942, and before the Repatriation Hearing Board on December 17, 1946, I deem the said alien enemy to be dangerous to the public peace and safety of the United States because he has adhered to a government with which the United States is at war or to the principles thereof; Now, THEREFORE,

It Is Ordered that said alien enemy depart from the United States within thirty days after notification of this order; and

It Is Further Ordered that, in the event the said alien enemy fails or neglects to depart from the United States within the said thirty days, the Commissioner of Immigration and Naturalization is directed to provide for the alien's removal to Germany."

The proclamation of the President referred to in the Return to the Writ of Habeas Corpus was published in the Federal Register, Volume 10, Number 144, page 8947 on July 20, 1945, as follows:

**"PROCLAMATION 2655—REMOVAL OF ALIEN ENEMIES BY
THE PRESIDENT OF THE UNITED STATES OF AMERICA**

A PROCLAMATION

WHEREAS section 4067 of the Revised Statutes of the United States (50 U. S. C. Par. 21) provides:

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the [fol. 18] United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety;

WHEREAS sections 4068, 4069, and 4070 of the Revised Statutes of the United States (50 U. S. C. 22, 23, 24) make further provisions relative to alien enemies;

WHEREAS the Congress by joint resolutions approved by the President on December 8 and 11, 1941, and June 5, 1942, declared the existence of a state of war between the United States and the Governments of Japan, Germany, Italy, Bulgaria, Hungary, and Rumania;

WHEREAS by Proclamation No. 2525 of December 7, 1941, Proclamations Nos. 2626 and 2527 of December 8, 1941, Proclamation No. 2533 of December 29, 1941, Proclamation No. 2537 of January 14, 1942, and Proclamation No. 2563 of July 17, 1942, the President prescribed and proclaimed certain regulations governing the conduct of alien enemies; and

WHEREAS I find it necessary in the interest of national defense and public safety to prescribe regulations additional and supplemental to such regulations:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes of the United States, do hereby prescribe and proclaim the following regulations, additional and supplemental to those prescribed by the aforesaid proclamations:

All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe.

[fol. 19] IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 14th day of July in the year of our Lord nineteen hundred and forty-

five and of the Independence of the United States of America the one hundred and seventieth.

Harry S. Truman.

By the President: James F. Byrnes, Secretary of State."

The sections of revised statutes referred to in the Presidential proclamation are Par. 21 to 24 inclusive of Title 50 U. S. C. A. and are part of Chapter 3 entitled "Alien Enemies".

The petitioner was born in Berlin, Germany, on February 5, 1890. He was out of Germany for most of the period of 1923 to March 1933. He returned to Germany in March 1933 and became a member of the Nazi party. Later he had some disagreements with other members and as a result he was sent to a German concentration camp, from which he escaped March 1, 1934, after being confined for over eight months. Sometime thereafter he came to this country and published a book, "I Knew Hitler", in 1937. His petition for naturalization as an American citizen was denied December 18, 1939. The day after Pearl Harbor, on December 8, 1941, he was arrested as an enemy alien and after a hearing before an Alien Enemy Hearing Board on January 16, 1942, he was sent to a concentration camp.

Hostilities with Germany ceased and pursuant to the President's proclamation of July 18, 1945, the petitioner was granted a hearing before the Repatriation Hearing Board on December 17, 1945. The minutes of the hearing are not attached to the return to the writ, only the order of removal dated January 18, 1946, which has been quoted above.

The petitioner appeared pro se on the return day of the writ, October 29th, and declined the suggestion of the Court that he should have the assistance of a lawyer in this proceeding. The petitioner came to Court with a typewritten brief to which he had annexed copies of a statement he had prepared for the Alien Enemy Hearing Board of January 16, 1942; a statement which he read before the Repatriation Hearing Board on December 17, 1945; a report he made to the Attorney General, dated January 16, 1946 to supplement the statement of December 17, 1945; and copies of certain affidavits of friends dated November 1945 to the effect that in their opinion the petitioner is worthy of American citizenship and is in no way dangerous to public

peace and safety of the United States. Apparently these affidavits had been submitted at the hearing before the Repatriation Board in December 1945.

The so-called Report of the petitioner, dated January 16, 1946, shows that petitioner knew the nature of the evidence the Repatriation Board was considering in his case [fol: 20] on the two questions of whether he adhered to the Government of Germany with which the United States is still at war (although hostilities have ceased) and whether he is an -lien enemy dangerous to the public peace and safety of the United States. I quote the following from the petitioner's Report of January 16, 1946:

"On December 17, 1945, I had my hearing at Ellis Island before the Repatriation Hearing Board consisting of Mr. Edward J. Ennis, Mr. John Burling, and Mr. W. F. Kelly. Attached statement of which I left a copy with the board for the record speaks for itself, however would be incomplete without supplementing it with a report of the failure of the board to produce the evidence, namely, 'sufficient cause' that would justify my removal out of the territory of the United States. . . ."

"Here is what in opinion of Mr. Ennis (or whatever other responsible person) presents the 'evidence' that justified my internment and now calls for my removal as a 'dangerous' alien enemy—a man with a clean record who has been legally admitted in this country in 1927, who has scrupulously obeyed the law of the land, who has leaned backward to explain himself without reservation to American officials whenever possible.

1) My asking the German consul Wiedemann about my legal status.

2) Passages from a copy of a letter of December 2, 1941, written by me to Claude Bragdon, Shelton Hotel, New York City, and apparently containing controversial remarks about Roosevelt and Hitler.

3) The answer I had given at my hearing before the Alien Enemy Hearing Board at Chicago on January 16, 1942, when asked which side I wished to win the

war. (I said I quote Gandhi who replied 'neither side' to the same question put to him some days ago.)

4) The denial of my petition for naturalization on December 18, 1939.

5) The question of my still being a Nazi in spite of my open break with Hitler and the Nazi party after my escape from a Nazi concentration camp early in 1934, in spite of my condemnation and devastating account of Hitler and his regime in my book 'I Knew Hitler' published by Charles Scribner's Sons in 1937, and in spite of my repeated declaration and easily verified fact that already since 1938 I have adopted the philosophy and morality of Edward Bellamy, whose synthesis and program offer a workable application of the teaching of Jesus Christ and of the abstract truth proclaimed in the Declaration of Independence in practical terms."

"Now, to return to the specific charges presented as 'evidence.'

[fol. 21] 1) Considering the rumor of my denaturalization after the banning of "I Knew Hitler" in Germany in 1938, and considering the denial of my petition for naturalization in the United States in 1939, my inquiry for my legal status is a natural and logical step to take, because in case of the loss of my German citizenship I would have been staatenlos—stateless, certainly an unenviable position, especially in these times.

2) Said letter to Claude Bragdon, written *before* Pearl Harbor by the way, is a private letter addressed to a distinguished and renowned American, therefore decidedly a matter that is nobody's concern but my own, particularly in view of the 'Four Freedoms' and all that implies. (Not wishing to discuss controversial remarks taken out of the context I asked for the whole letter to refresh my memory as to its real meaning. However, significantly my reasonable request was denied.)

3) I quoted Gandhi's reply, first, I thought it was a wise answer for reasons too long to explain now,

and second, certainly Gandhi could not be accused or even suspected of being a Nazi or Nazi sympathizer. Anyway, a strange point of 'evidence' particularly in view of the 'Four Freedoms' and all that implies.

4) It is a matter of record filed with the USA District Court of Michigan Southern District at Detroit that the reason for denial of my petition on December 18, 1938, was *not* because of an alleged dangerousness because of my alleged adherence to a gangster government or to its satanic principles, but because of 'failure to prove attachment to the principles of the Constitution of the United States. With prejudice. Not to refile before five years from date.' In other words, according to the verdict of a Federal Judge in a public court procedure I should have been able to refile my petition on December 18, 1944, and most probably would be an American citizen by now. However, my application to refile a petition for naturalization properly submitted to the Nationality & Status Section of the I. & N. Service at New Orleans, La., was not taken into practical consideration because of my status of an interned alien enemy. Apart from the fact that the denial of my first petition at Detroit was a 'flagrant miscarriage of Justice' to quote a reporter of the Detroit Times—a fact I could easily prove if allowed to do so as already repeatedly stated in communications to Mr. Ennis and other American officials—said denial under no circumstances can serve as a point of evidence to justify my proposed removal as an alien enemy 'dangerous to the peace and safety of the United States.'

5) Am I still a Nazi?—At this point, I wish to state that I am well aware of the false pretense of the whole business, for the gentlemen interested in my removal are not so stupid to believe themselves that I am 'dangerous' in the sense presented for the record and the public. If nevertheless I choose to fight this [fol. 22] miserable humbug, I am doing it also for the record and for a definite purpose which will become clearer as the days go by."

"For your information, I may quote a passage taken from a statement of September 13, 1944, made at the instance of Mr. Raymond E. Bunker, officer in charge of the A.D. station at Algiers, La., and forwarded to Mr. Ennis, which reads as follows:

. . . . It is a matter of record that I have never been a "Nazi" in the sense the Nazi is publicly interpreted, represented, understood and indicated in America ever since Hitler's rise to power in 1933, but especially since Pearl Harbor when war propaganda and lying from all sides intensified hate and confusion throughout the world, so that the 'Nazi,' for instance, in the minds of most Americans is identical with the lowest beast and the very devil himself.

'It is also a matter of record that ever since I became a member of the Nazi party I specialized in foreign politics, therefore had nothing to do with the internal development and domestic policies of the Nazi party. Nor did I have any influence whatever on the moulding of Nazi thought and the shaping of the Nazi system, for the simple reason that except for short visits I was again continuously outside of Germany ever since the spring of 1923 until March 10, 1933, shortly after Hitler became chancellor on January 30, 1933. And of the three hundred and fifty-five days I spent in Germany 1933-34, I rotted two hundred and forty-five days in prisons and in concentration camps, because I consciously and fearlessly opposed certain developments and personalities that jeopardized the very future of the German revolution. . . . Thus, it must be emphasized that I have neither part nor lot in nor the slightest responsibility for whatever happened in Germany, nor whatever Hitler, the Hitler regime, and the Nazi party may be guilty of since the beginning of their rule, for the simple reason that I have been a prisoner in Germany shortly after my arrival in Germany in 1933, and that I have not been in Germany or Europe ever since my escape from a Nazi concentration camp on March 1, 1934."

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"I may emphasize that as a matter of fact I personally worked for Hitler and the Nazi party only up to May 1933, and ever since uncompromisingly opposed the "legitimate" Nazi regime."

"The hearing revealed, however, that neither Mr. Ennis nor Mr. Buring—contrary to the 'full examination' enacted by law—have thought it necessary to read 'I Knew Hitler'—not only a most revealing human document, but also a most important piece of evidence, in my favor, to be sure, because from beginning to end it is full of biting criticism, exposure, and condemnation of Hitler and his chiefs, of Nazi ways and proceedings, often in a language so strong that in the English edition by Jarrolds, London, such passages are modified or omitted entirely because of the severe libel laws in England. Otherwise these gentlemen would have learned of a letter I wrote to Hitler after my escape from Germany and arrival at Geneva in April 1934. (See pp. 752 and 753.) The essential parts of said letter are reproduced in paraphrased form in the book. I quote here only the following:

"Regrettably I could no longer call him my Fuehrer", for I could not longer profess adherence to a party which was willing to treat an innocent and faithful member so shamefully, depriving him of his liberty for eight months without legal (1) procedure and without a hearing, brutally and ruthlessly abandoning him to spiritual and physical destruction."

"... that I was ready to accept the personal injustice for the good of my soul, and to let it go at that. But there was a principle at stake whose importance transcended my unimportant self. Hitler himself, I reminded him, had told a leader's conference in October 1933: "He who courageously demands his right, in the end will get his right". And in another speech he had said that he would retreat "only before reason". In this case reason was on my side. He knew well that the calm admission of error was not a sign of weakness but of strength—a proof of human greatness. And if this last attempt to obtain my rights should also be ig-

nored, I would have to act at my discretion, with only my conscience as my guide.' "

"Finally, for the record, I draw attention to enclosed brief read by me in court and left as evidence on December 18, 1939. Though it did not move the Judge to make an honest decision regarding my petition for naturalization, it nevertheless is perhaps the most-revealing document about by own self. It explains the inner change from the Nazi Ludecke who is dead to the new Ludecke who according to the enclosed affidavits of three trustworthy and distinguished Americans with mature judgment 'is in every respect worthy of American citizenship and in no way dangerous to the public peace and safety of the United States.'

"Enough is said to show that it would be a preposterous lie and criminal abuse of power to brand me with the stigma of deportation as a man 'dangerous to the peace and safety of the United States'. If anything I might be considered dangerous to the peace and safety of hypocrits and liars. However, even that is false, for no longer am I a revolutionary activist because among other things I learned that first I must reform myself before I dare-reform my fellow men, though I am ready any time to give from the little I know to those who still know less than I.

Far be it from me, however, to thrust my goodwill upon anybody and insist to stay in a community [fol. 24] whose public servants "of ill will seek to remove me by pitiful procedures and illegal means. Therefore, I propose that I leave voluntarily as a free man, not as a dangerous alien deportee, at the earliest opportunity provided I shall be allowed sixty days to settle my affairs before sailing date.

Fundamentally, it matters not where I live, for I can strive to live the right life and be of service where ever I am. Besides, it may well be a better thing to do the best I can while I can in the midst of a defeated people suffering in body and soul, than to be a futile and frustrated something in the midst of a triumphant people breathing the foul air of self-complacency, hypocrisy, and self-deceit."

In this habeas corpus proceeding I have considered the statements made by petitioner in the exhibits attached to his brief with the same force and effect as if he had testified to them before me at the hearing on the return of the writ.

That he had been a member of the Nazi party he does not deny; but he insists that he had ceased to be a Nazi when he was put in a German concentration camp in 1934. His answer to a question at the Alien Enemy Board Hearing on January 16, 1942, to the effect that he wished "neither side" to win the war which the Nazi regime in Germany was then waging against this country, indicates that he adhered to the German Government at that time. As to the other evidence before the Repatriation Board, as described in the petitioner's Report, I cannot say that the Board had no right to reject the petitioner's contention that the old Nazi in him was long since dead and that he had been following for many years a new political philosophy based on the writings of the American, Edward Bellamy.

In a habeas corpus proceeding by an alien enemy who has been ordered to depart from the United States within thirty days or be removed therefrom, pursuant to T. 50 U. S. C. A. Par. 21 and Presidential Proclamation #2655, the District Court may not review the evidence on which the Attorney General based his order, for the purpose of determining whether or not the Attorney General's determination was correct. There is no doubt about the constitutionality of the statute or about the power of the President to issue Proclamation #2655. But the Court, in my opinion, may inquire to ascertain if the petitioner was accorded a fair hearing before being ordered deported and whether there was some evidence having probative value to support the Attorney General's conclusion. Deportation is a severe penalty, involving great hardship. *Bridges v. Wixon*, 326 U. S. 135 at p. 147. I do not agree with the Government's contention that the only question the Court may consider in this habeas corpus proceeding is the petitioner's alien enemy status, although there are cases which give support to that view. (*U. S. ex rel Schwarzkopf v. Uhl*, 137 F. 2d 898 at p. 900, decided during actual hostilities and applying T. 50 U. S. C. A. Par. 21 to the internment of a alien enemy.)

[fol. 25] Concerning deportation proceedings under the Alien and Nationality Act, 8 U.S.C.A. Par. 155, Chief Justice Stone stated, in a dissenting opinion in the *Bridges* case at p. 167:

"Congress has committed the conduct of deportation proceedings to an administrative officer, the Attorney General, with no provision for direct review of his action by the courts. Instead it has provided that his decision shall be 'final' 8 U.S.C. Par. 155, as it may constitutionally do. *Zakonaite v. Wold*, 226 U. S. 272, 275, and cases cited. Only in the exercise of their authority to issue writs of habeas corpus, may courts inquire whether the Attorney General has exceeded his statutory authority or acted contrary to law or the Constitution. *Bilokumsky v. Todd*, 263 U. S. 149, 153; *Vajtaner v. Commissioner of Immigration*, supra. And when the authority to deport the alien turns on a determination of fact by the Attorney General, the courts, as we have said, are without authority to disturb his finding if it has the support of evidence of any probative value."

True, the deportation order in the present case was issued under another statute (T. 50-U.S.C.A. Par. 21) effective "whenever there is a declared war". The individual involved was not just an alien, but an alien enemy. Nevertheless, actual hostilities with Germany had ended when the President's proclamation was issued on July 18, 1945. We can well afford to scrutinize more thoroughly a proceeding under a war statute when hostilities have ceased. As Mr. Justice Rutledge put it in his dissenting opinion, *In Re Yamashita*, 327 U. S. 1 at p. 46:

"We are technically still at war, because peace has not been negotiated finally or declared. But there is no longer the danger which always exists before surrender and armistice. Military necessity does not demand the same measures. The nation may be more secure now than at any time after peace is officially concluded."

In a habeas corpus proceeding such as this the Court should have the right to consider whether more than the

formalities have been satisfied in the issuance of an order for the deportation of an alien enemy. Assuming, arguendo, that the alien enemy had been peaceful and law abiding and in fact believed in our American institutions and had never since his arrival in this country adhered to the foreign enemy government or its principles, would the Courts be powerless to help him? The statement that it is highly improbable that such a case would ever arise, is no argument against the right of the Court to inquire into the facts of each case so as to be satisfied that the issuance of the deportation order does not involve an arbitrary and unjust use of war powers when actual hostilities have ceased.

Under the President's Proclamation the Attorney General has set up Repatriation Hearing Boards. The relator herein received notice of and attended a hearing in his case before the Board on December 17, 1945. He made the [fol. 26] points he could in his defense before that Board and in subsequent communications to the Attorney General. The letters and communications annexed to the petitioner's brief establish, in my opinion, that the petitioner, an alien enemy, had a fair hearing before the Repatriation Board. He knew the nature of the evidence on which the Government based its charge, that he was dangerous to the public peace and safety of the United States because he had adhered to the Government of Germany and the principles thereof. The evidence was substantial.

Where it appears that the Attorney General's order for the alien enemy's deportation has been made after the alien has been accorded a fair hearing on the issue of his removal from the United States, the determination of the Attorney General, supported by evidence of some probative value, is binding on the District Court. The writ of habeas corpus is accordingly dismissed. Settle order.

Dated, November 6, 1946.

Vincent L. Leibell, United States District Judge.

[fol. 27] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 38-293 .

UNITED STATES OF AMERICA, ex rel. KURT G. W. LUDECKE,
Relator,
against

W. FRANK WATKINS, as District Director of Immigration and Naturalization of the United States for the District of New York, or such person, if any, as may have the said Kurt G. W. Ludecke, in custody, Respondent

OPINION—January 2, 1947

LEIBELL, D. J.:

On October 18, 1946 a writ of habeas corpus was issued on the petition of the above named relator Kurt G. W. Ludecke who alleged that he was illegally imprisoned and restrained in his liberty by Mr. Watkins the director of Immigration and Naturalization Service at Ellis Island. The petitioner appeared pro se. He declined the assistance of a lawyer. The return filed by the respondent set forth the order for the petitioner's deportation dated January 18, 1945 made under the Presidential Proclamation #2655 dated July 14, 1945, in relation to the removal of alien enemies by the President pursuant to Sec. 4067 of the Revised Statutes of the United States (50 U.S.C. §21).

At the hearing before me on October 29, 1946, the petitioner had started reading a long statement which I interrupted and instead received the document and certain letters, etc., thereto annexed. In my opinion filed November 7, 1946 dismissing the writ, I stated:

"In this habeas corpus proceeding I have considered the statements made by the petitioner in the exhibits attached to his brief with the same force and effect as if he had testified to them before me at the hearing on the return of the writ."

Later the respondent noticed an order for settlement for November 20th and petitioner wrote me asking that he be produced at that time to protect his rights. I again sug-

gested to the petitioner that he have a lawyer take care of the appeal and I assigned Mr. Henry K. Chapman, an attorney experienced in Federal practice, to advise the petitioner. Later I informed Mr. Chapman that if he or the petitioner wished to have the hearing reopened for the purpose of offering additional evidence I would give consideration to any such request. The request was made and I set December 26th as the date of the rehearing. The petitioner did not appear but his lawyer was present. The following day, at my direction, the petitioner was brought to Court from Ellis Island and his attorney called him as a witness in his own behalf. In the course of petitioner's testimony he referred to certain affidavits which he had incorporated in a further brief and he also discussed certain parts of the Court's opinion of November 6th.

One affidavit (Ex. 1)¹ is from Marion B. Earnshaw, dated December 20, 1946. She describes the circumstances under which the petitioner was accorded a hearing before the Repatriation Board at Ellis Island on December 17, [fol. 28] 1945. She asserts that Ludecke was treated as one already guilty and that the attitude of the three members of the Board was prejudicial; that they would not tell him of what crime he stood accused; that he was not allowed to read a prepared statement; that he was questioned in such a way as to confuse him; that the hearing was hurried and that her own testimony was taken on the ferry after 6:30 P.M.

A second exhibit² is a copy of a letter dated December 15, 1939 addressed by Dr. P. K. Roest to District Judge Arthur J. Tuttle who denied a petition for naturalization. The letter asked that Judge Tuttle "recognize the change in Mr. Ludecke's thought and life from a Nazi agent to a worthy and promising American." It is part of the record in the naturalization proceedings.

Also included in the brief (which was marked Exhibit 3)³ are copies of affidavits of Christian T. Anderson and Robert S. Steen which apparently were prepared for submission in the aforementioned proceeding for the naturaliza-

¹ See p. 71 of Appendix of Appellant's Brief.

² See p. 75 of Appendix of Appellant's Brief.

³ See p. 78 of Appendix of Appellant's Brief.

tion of Ludecke, but which are still in his possession. They refer to a dinner given by Morley Osborne in December 1938 to which Ludecke was invited and at which he was asked certain questions by the guests. It seems that Mr. Osborne had installed a dictaphone and had recorded the questions and answers. The guests did not know this. Mr. Osborne was later a witness in opposition to Ludecke's application for citizenship in December 1939. The affiants state that what Mr. Ludecke described at the dinner was not his own viewpoint but that of Nazi Germany as he had known it; that Ludecke had so stated at the time; and that there was no evidence to support Mr. Osborne's suspicions concerning Mr. Ludecke.

Mr. Steen in his affidavit (evidently prepared after Judge Tuttle had filed a written opinion) states:

"Further that your deponent declares that the statement made in Court's written opinion, page six (6), saying 'Two witnesses of good standing voluntarily appeared and testified as to the character of recent addresses made by petitioner, showing his lack of attachment to the principles of our Constitution and the slavish attachment to Hitler and the present German cause,' is a misrepresentation as far as the testimony of this deponent is concerned; that though it is true that said Mr. Ludecke explained the Nazi point of view with much warmth, it is also true that the atmosphere of the aforementioned meeting at the Eddystone Hotel was not conducive to a fair estimate of whether or not a man is worthy of becoming an American citizen; and that it is the belief of this deponent that Mr. Ludecke has put the past behind him and possesses the gift of mind and spirit which would make him a good American citizen; * * *"

In his brief submitted December 27, 1946 the petitioner argues that I erred in my opinion of November 6, 1946, when I stated that he (Ludecke) "made the points he could in his defense before the Board (December 17, 1945) and in subsequent communications to the Attorney General," and that "He knew the nature of the evidence on which the Government based its charge that he was dangerous to the public peace and safety of the United States because he had adhered to the Government of Germany and the principles thereof." The fact that Ludecke's "report" of

the proceedings to the Attorney General, although dated January 16, 1946 was not forwarded to Mr. Kelly (a member of the Board) until January 21, 1946; while in the meantime the order of deportation was signed January 18, 1946 does not affect the correctness of the Court's statement. Ludecke's hearing had been held December 17, 1945. The order of deportation was not signed until 32 days thereafter [fol. 29] after. If he did not get his so-called report filed until several days after the Attorney General acted on the Board's findings, it was his own fault. If there was anything in the report that called for any change in or withdrawal of the order of deportation, it was received so soon after the order of January 18, 1946 that the Attorney General could have taken steps to void or modify the order if he thought the contents of the Ludecke "report" warranted any such action. However, that "report" clearly shows that Mr. Ludecke knew the nature of the evidence against him because he lists five items on page 2 thereof and he discusses them at some length in subsequent pages of the report.

As to his knowledge of the nature of the evidence against him the petitioner states in his brief of December 26, 1946:

"As to the point that Relator 'knew' the nature of the evidence on which the Government based its charge that he was dangerous. . . 'it must be emphasized that Relator learned of 'the nature of the alleged evidence' only at said hearing, therefore did not make 'the points he could in his defense before the Board' for reasons already explained on p. 3 of his Statement of December 11, 1946, and for the reasons stated in the sworn Statement mentioned above with which Relator will deal later."

Concerning the hearing of December 17, 1945 the petitioner asserts that it was not a fair hearing; he intimates that the members of the Board were not qualified, were immature, irresponsible and worse. At the last page of his brief he again refers to the members of the Board in this language:—"my judges—are gone. Good riddance. Who are they, anyway?"

The brief refers also to the answer petitioner gave in January 1942, at a hearing in relation to his internment; that he wished "neither side" to win the war. He says the question was "unfair and stupid" and that the answer was "an expression of a mere philosophical and religious

belief forced upon him in answer to an unfair question." He further explains his answer as follows:

"To be perfectly clear, Relator may add here that in saying 'neither side' he was well aware that *neither side* was qualified, emotionally, mentally, and morally, for total victory, therefore incapable to impose or even work intelligently and honestly for a just and lasting peace; hence his morality and awareness dictated that he wish for and pray for a negotiated peace on the basis of an honest understanding towards Universal Brotherhood, though he, well knew that neither Hitler nor Stalin, neither Roosevelt nor Churchill, had the vision and the will, the understanding and the wisdom, least of all the insight and with it the temperantia and the necessary humility to do just that. They did not know and know not yet that the only victory worthwhile is the victory over ourselves, that is, our 'unconditional surrender' to God, and that to conquer others we first must conquer ourselves."

I have reviewed the points and exhibits submitted by the petitioner on the rehearing and I have in mind his testimony. I am still of the opinion that the petitioner received a fair hearing before the Repatriation Board and that the evidence submitted before the Board was substantial.

At this point I should note also that the Circuit Court of Appeals of this Circuit on December 31, 1946 affirmed an order dismissing a similar writ in *Ex rel Schleuter v. Watkins*. The appellate court in affirming the order of Judge [fol. 30] Rifkind approved his opinion reported in 67 F. Supp. 556 and stated:

"* * * the statute authorized the making of an order of deportation of an alien enemy without a court order and without a hearing of any kind."

and that—

"When the procedure is through Executive action the statute calls for no hearing in court or elsewhere.

The opinion of the appellate court closes with this statement:

"The President duly exercised his statutory power in Proclamation No. 2526 and 2655. They did not com-

pel a hearing which could meet the requirement of due process."

The action of the Attorney General in issuing the deportation order of January 18, 1946 is approved and the writ of habeas corpus is again ordered dismissed. Submit a new proposed order incorporating a reference to the rehearing.

Dated, January 2, 1947.

Vincent L. Leibell, United States District Judge.

[fol. 31] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 38-293

UNITED STATES OF AMERICA, ex rel KURT G. W. LUDECKE,
Relator,

v.

W. FRANK WATKINS, as District Director of Immigration and Naturalization of the U. S. for the District of New York, or such person, if any, as may have the said Kurt G. W. Ludecke in custody, Respondent

ORDER REMANDING RELATOR

The Writ of Habeas Corpus in the above-entitled matter having come on to be heard before this Court on the 29th day of October, 1946, and after hearing Kurt G. W. Ludecke, who appeared in his own behalf, a German native or citizen over the age of 14, who had been previously interned and who had been served with an order of removal by the Attorney General in support of the writ, and John F. X. McGohey, United States Attorney for the Southern District of New York (William J. Sexton, Assistant United States Attorney, of Counsel) in opposition thereto, and an opinion dismissing the writ having been rendered Nov. 7, 1946, and a rehearing having been had on the 27th day of December, 1946, and after hearing Henry K. Chapman, Esq. in support thereof, and upon the petition and a further opinion dismissing the writ having been filed Jan. 2, 1947, the return thereto and all the papers and proceedings heretofore had her-in, it is

Ordered that the Writ of Habeas Corpus be and the same hereby is dismissed, and it is

Further Ordered that the *the* relator be and he hereby is is remanded to the custody of the District Director, Immigration and Naturalization Service, Ellis Island, New York Harbor, New York.

Dated New York, N. Y., January 10th, 1947.

Vincent L. Leibell, U. S. D. J.

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

SIR:

Please Take Notice, that the relator herein, Kurt G. W. Ludecke, hereby appeals to the Circuit Court of Appeals for the Second Circuit from the order entered herein on January 10, 1947, made by Hon. Vincent L. Leibell, United States District Judge, and from each and every part thereof.

Dated New York, January 21, 1947.

Henry K. Chapman, Attorney for Relator, Office & P. O. Address, 291 Broadway, New York 7, N. Y.

To John F. X. McGohey, Esq., United States Attorney for the Southern District of New York, Attorney for Respondent, Office & P. O. Address, United States Court House, Foley Square, New York 7, N. Y.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF APPELLANT AS TO CORRECTNESS OF THE RECORD

It is hereby stipulated and agreed that the foregoing is a true copy of the Transcript of the Record of the said

District Court of the above entitled matter as agreed on by the parties.

Dated April 10, 1947.

Kurt G. W. Ludecke, Appellant.

[fol. 34] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 35] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT, OCTOBER TERM, 1946

No. 250.

(Argued June 11, 1947. Decided July 24, 1947)

Docket No. 20572

UNITED STATES ex rel. KURT G. W. LUDECKE, Relator-
Appellant,
against

W. FRANK WATKINS, as District Director of Immigration
and Naturalization of the United States for the District
of New York, or such person, if any, as may have the
said Kurt G. W. Ludecke in custody, Respondent-Appellee

Before L. Hand, Swan and Augustus N. Hand, Circuit
Judges

Appeal from the United States District Court for the
Southern District of New York

From an order dismissing a writ of habeas corpus brought
on behalf of the relator Kurt G. W. Ludecke, the latter
appeals. Affirmed.

[fol. 36] Kurt G. W. Ludecke, Relator-Appellant; Attor-
ney in person.

John F. X. McGohey, United States Attorney, for Re-
spondent-Appellee; William J. Sexton, Assistant United
States Attorney, Counsel.

OPINION

AUGUSTUS N. HAND, Circuit Judge:

Ludecke, the relator-appellant, made an oral argument and submitted a brief, both of which have been interesting and moving. He is a German alien enemy held pursuant to an order of internment of the Attorney General dated February 9, 1942. An order was made by the Attorney General for his removal to Germany under date of January 10, 1946, which recited that he had been given a full hearing before a Repatriation Hearing Board and that upon the evidence there presented the Attorney General deemed him "dangerous to the public peace and safety of the United States because he has adhered to a government with which the United States is at war or to the principle thereof."

It is not questioned that Ludecke is an enemy alien, but he argues that the evidence before the Repatriation Hearing Board was insufficient to show that he is a person "dangerous to the public peace and safety of the United States" and that due process of law guaranteed by the Fourteenth Amendment to the Constitution entitled him to a judicial hearing. He also argues that the Alien Enemy Act has ceased to be operative owing to the unconditional surrender of Germany and the cessation of actual hostilities. We have dealt with the first contention in *United States ex rel. Schlueter v. Watkins*, 158 F. 2d 853, and with the second in *United States ex rel. Kessler v. Watkins* in an opinion to be [fol: 37] filed herewith. In both decisions we reached conclusions contrary to the relator's contentions and for reasons which seem to us unanswerable. We accordingly hold that his writ of habeas corpus, whereby he endeavored to review the order of the Attorney General was properly dismissed (1) because the Alien Enemy Act calls for no hearing where the removal of the alien enemy is by executive action, and (2) because that act remains effective so long as a state of war exists with the German Nation, as it still does, under the terms of the President's Proclamation 2714 of December 31, 1946.

We see no reason for discussing the nature or weight of the evidence before the Repatriation Hearing Board, or the finding of the Attorney General for the reason that his order is not subject to judicial review. However, on the face of the record it is hard to see why the relator should now be compelled to go back. Of course there may be much

not disclosed to justify the step; and it is of doubtful propriety for a court ever to express an opinion on a subject over which it has no power. Therefore we shall, and should, say no more than to suggest that justice may perhaps be better satisfied, if a reconsideration be given him in the light of the changed conditions, since the order of removal was made eighteen months ago.

Order affirmed.

[fol. 38] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

U. S. ex rel. KURT G. W. LEDECKE, Relator-Appellant,

v.

W. FRANK WATKINS, as District Director, etc., Respondent-Appellee

JUDGMENT—Filed July 24, 1947

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk, by A. Daniel Fusaro,
Deputy Clerk.

[fol. 39] [File endorsement omitted.]

[fol. 39a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 40] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1947

No. 147, Misc.

KURT G. W. LUDECKE, Petitioner,

vs.

W. FRANK WATKINS, as District Director of Immigration
ORDER GRANTING PETITION FOR CERTIORARI AND TRANS-
FERRING CASE TO APPELLATE DOCKET—April 5, 1948

On petition for writ of certiorari to the United States
Circuit Court of Appeals for the Second Circuit.

A petition for rehearing having been submitted in this
case,

Upon consideration thereof, it is ordered by this Court
that the petition for rehearing be, and it is hereby, granted.

It is further ordered that the order denying certiorari
entered January 12, 1948, be, and it is hereby, vacated; and
that the petition for writ of certiorari herein be, and it is
hereby granted. The case is transferred to the appellate
docket as No. 723.

It is further ordered that the duly certified copy of the
transcript of the proceedings below which accompanied the
petition shall be treated as though filed in response to
such writ.

Endorsed on cover: Enter Petitioner pro se. File No.
52,953. U. S. Circuit Court of Appeals, Second Circuit.
Term No. 723. Kurt G. W. Ludecke, Petitioner, vs. W.
Frank Watkins, as District Director of Immigration. Peti-
tion for writ of certiorari and exhibit thereto. Filed Octo-
ber 21, 1947. Term No. 723 O.T. 1947.

(5775)

